

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
★ APR 16 2014 ★

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O'NEIL WALLACE,

BROOKLYN OFFICE

Petitioner,

NOT FOR PUBLICATION
MEMORANDUM & ORDER
12-CV-02117 (CBA) (VVP)

- against -

DARWIN LACLAIR, Superintendent, Franklin
Correctional Facility,

Respondent.

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AMON, Chief United States District Judge.

On April 27, 2012, O'Neil Wallace filed this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Wallace argued that his criminal conviction in New York State Court for manslaughter in the second degree, stemming from his October 19, 2007 shooting of his wife, should be vacated because (1) the evidence was legally insufficient to support his conviction, (2) the trial court erred in allowing into evidence a 911 call placed by the victim's mother, and (3) his trial counsel was ineffective for (a) failing to pursue a defense that medical malpractice was an intervening cause of the victim's death and (b) failing to preserve for appellate review the claim that the evidence was insufficient to support his conviction. The Court referred Wallace's habeas petition, as well as his motion for an evidentiary hearing, to Magistrate Judge Viktor V. Pohorelsky for report and recommendation. On November 14, 2013, Magistrate Judge Pohorelsky issued a Report and Recommendation ("R&R") recommending that the Court deny both Wallace's habeas petition in its entirety and his motion for an evidentiary hearing.

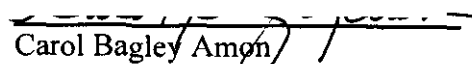
No party has objected to the R&R, and the time for doing so has passed. When deciding whether to adopt an R&R, a district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). To accept

those portions of the R&R to which no timely objection has been made, “a district court need only satisfy itself that there is no clear error on the face of the record.” Jarvis v. N. Am. Globex Fund, L.P., 823 F. Supp. 2d 161, 163 (E.D.N.Y. 2011) (internal quotation marks omitted).

The Court has reviewed the record and finds no clear error in Magistrate Judge Pohorelsky’s recommendation that Wallace’s habeas petition and motion for an evidentiary hearing be denied.¹ Since Wallace has failed to make a “substantial showing of the denial of a constitutional right,” a Certificate of Appealability shall not issue. 28 U.S.C. § 2253(c). The Clerk of the Court is directed to enter judgment and to close the case.

SO ORDERED.

Dated: Brooklyn, New York
April 14, 2014

s/Carol Bagley Amon

Carol Bagley Amon
Chief United States District Judge

¹ Because Wallace’s ineffective assistance of counsel claims are clearly meritless, the Court does not rely on that part of the R&R discussing whether they may be procedurally barred or unexhausted. (See R&R at 17-19.)